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October 19, 1994

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VIA HAND DELIVERY COVERED BY ORIGINAL

Ms. Karen Brinkman, Special Assistant  
Chairman Reed E. Hundt  
Federal Communications Commission  
Room 814  
1919 M Street., N.W.  
Washington, D.C. 20554

RE: Ex Parte Presentation -- Docket 93-252

Dear Karen:

I would like to bring to your immediate attention the following suggestions for resolving the frequency warehousing and application problems affecting the Specialized Mobile Radio (SMR) Operators. The suggestions were offered by SMR WON, a trade association of small licensees throughout the nation:

1. Wide Area Waivers: Warehoused Spectrum Cap. The FCC should reconsider its SMR spectrum cap in the Third Report and Order in Docket 93-252 (Regulatory Parity) (September 23, 1994) and modify licenses inconsistent with the spectrum cap.

No one entity, including controlled affiliates, should hold extended five-year authorizations for more than fifty (50) 800 Mhz channels in any rural market which became wait-listed in 1993 or thereafter. Longer wide-area requests in metropolitan areas wait-listed before 1993 would not be affected. (Pre-1993 waitlists generally represented areas where frequency congestion arose from frequency use, not speculation.) Any non-conforming grants would be modified, upon reconsideration in Docket 93-252, for all channels exceeding that number. Licensees could identify which 50 channels they would retain; their licenses granted under rule waiver<sup>1</sup> would be modified to cover only those 50 channels, with the balance being placed in the Commission's vacant spectrum pool.

<sup>1</sup> Typically, waivers of Section 90.621 of the Rules (short spacing) were granted in connection with the wide area waiver requests.

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Some of the recent waivers are excessive in their scope. Many recent licenses include hundreds of SMR channels subject to five-year construction waivers, well beyond the ability of the rural areas to absorb. In contrast, local SMR operators can only obtain five (5) channels at a time. The only purposes for such large acquisitions of frequencies appears to be speculative warehousing and driving local competitors out of business during the next five years.

This "compromise spectrum cap would have the following salutary effects:

A. Wide-area licenses would still be permitted to construct, over time, one block of 50 channels. A 50-channel maximum is consistent with the FCC's own recent proposals, and with Nextel's position that a minimum of 42 channels was sufficient in each market to operate its high-capacity digital system. See, Nextel comments in PR Docket 93-144 (800 MHz EMSP Notice).

B. Part of the recovered, unbuilt frequencies would be made available in each market for disposing of the backlog of applications filed before August 10, 1994. This would permit, with proper processing, that those bona fide existing operators would obtain additional frequencies needed to expand existing systems. These channels would still be processed according to the current co-channel rules.

C. Additional spectrum would be recovered for auction. Spectrum should be auctioned on BTA market basis, with set-asides for small businesses, installment payments, and with small down payments.

Small SMR operators generally are opposed to auctions, since they would be frozen out of the bidding process. They would only support auctions if coupled with lifting the freeze and processing procedures which permit reasonable opportunities for frequency grants to operators presently providing service to the public in the areas proposed.

Modifying unbuilt licenses to promote the public interest is will within the Commission's authority. 47 U.S.C.

Statute 316. Commission rules require construction of SMR mobile radio facilities within one year, except where proper showings are made, and exceptions to the general rules are special privileges, not rights. Also, review of this proposal on reconsideration is within the scope of the Spectrum Cap limitations for SMR adopted in the Third Report and Order on September 23, 1994.

2. Lifting the Freeze and Application Processing. The freeze on application processing should be lifted. In addition, moderate steps should be taken to eliminate speculation and place frequencies in the hands of legitimate operators. The success of the following proposals are dependent upon implementation of the Warehoused Frequency Cap suggested above.

A. Tower Site Availability. In specifying tower site coordinates on the FCC Form 574, each applicant is implicitly representing to the Commission that it has reasonable assurance of tower site availability to construct at that location. Otherwise, the application process becomes a sham.

Therefore, all applicants in the unprocessed pool of applications should be required to give the name, address, and phone number of the tower site owner, and certify that the applicant had reasonable assurance of tower site availability at the time the application was filed. Requiring such information is well within the processing discretion of the Commission, and requires no rule change. Such information is routinely requested on other forms, including the Broadcast Form 301 and the Cannon Carrier Form 401.

B. Application Preparation. The Commission also should require applicants to identify the name, address, and phone number of the person or entity who prepared the application, and state the price paid for application preparation. The applicant should also provide a list of all pending applications, with file numbers filed by the applicants or direct family members. This will also serve to identify to the Commission where and speculation may have occurred. Submission of this information would permit responsible processing of existing applications.

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The Commission thereby would assist the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC) investigations into SMR applications fraud and the prosecution of application mill speculators.<sup>2</sup> Request for this additional information is also within the scope of routine application processing to prevent fraud and serve the public interest.

The submission of this information, or the failure to submit this information, is critical to the review process. An expressed FCC staff concern is the amount of time it would take to collate any submissions and the resulting processing time. The alternative is to blindly grant the first application in the processing line, no matter how speculative or undeserving. Such blind processing has itself encouraged massive speculation in FCC frequencies.

Requesting additional information serves at least five public purposes:

1. restoring public confidence in the Commission's mobile radio processing procedures;
2. promoting competition by preventing injury to and reasonable expansion of local and regional SMR businesses offering low-cost service to a substantial segment of the public;
3. permitting legitimate construction of nationwide services without undue concentration of services;
4. preventing the massive warehousing of frequencies,
5. obtaining unbuilt frequencies for auction, and;

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<sup>2</sup> Speculation in SMR applications has been described as the largest fraudulent scheme circulating in the country today. See Communications Daily, p. 5 (9/28/94); and September 23, 1994, South Florida Business Journal, June 10, 1994; and Communications Daily, May 19, 1994.

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6. identifying and prosecuting speculators.

Please give and fair consideration of this proposal in your review consistent with current rules and regulations. I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in black ink that reads "Mike Crapo". The signature is stylized with a large, sweeping "M" and a cursive "Crapo".

Michael D. Crapo  
Member of Congress

MDC/cd

cc: Offices of Commissioners  
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Hon. John Dingell  
Hon. Edward J. Markey  
House Rural Caucus  
Small Business Committee  
Senator Robert Dole  
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